

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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THE ANNUITY, PENSION, WELFARE, and :  
TRAINING FUNDS of the INTERNATIONAL UNION :  
OF OPERATING ENGINEERS, LOCAL 14-14B, AFL- :  
CIO by its TRUSTEES EDWIN L. CHRISTIAN, CHRIS :  
CONFREY, JOHN CRONIN, ALFRED GEROSA, :  
JOHN HYERS, DANIEL NOESGES, DENISE M. :  
RICHARDSON, and JOHN F. O'HARE and JOHN and :  
JANE DOE, Beneficiaries of the ANNUITY, PENSION, :  
WELFARE, and TRAINING FUNDS of the :  
INTERNATIONAL UNION OF OPERATING :  
ENGINEERS, LOCAL 14-14B, AFL-CIO, :  
:  
Plaintiffs, :  
:  
-against- :  
:  
COLUMBUS CONSTRUCTION CORP., :  
:  
Defendant. :  
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MEMORANDUM AND ORDER

09-cv-2117 (ENV) (VVP)

VITALIANO, D.J.

On May 18, 2009, plaintiffs filed this action pursuant to sections 502 and 515 of the Employee Retirement Income Security Act, as amended, 29 U.S.C. §§ 1132, 1145 ("ERISA"). The crux of plaintiffs' allegations is that defendant failed to make required contributions to the plaintiffs' benefit and pension funds in contravention of a collective bargaining agreement ("CBA"), to which defendant became a signatory on July 19, 2002. (Docket No. 13, Ex. A.)

After defendant failed to answer or otherwise respond to the complaint, plaintiffs moved for entry of default and default judgment in documents filed with the Court on July 13, 2009. (Docket Nos. 4, 5.) On November 23, 2009, the Clerk of the Court issued a certificate of default noting that process was served on defendant on June 12, 2009, by service on an individual who "refused to give her name but known to be the Managing Agent" of defendant. (Docket No. 9.) On December 1,

2009, the Court granted plaintiffs' motion for a default judgment and the action was referred to Magistrate Judge Victor V. Pohorelsky to conduct an inquest and prepare a Report and Recommendation ("R&R") on the amount of damages, inclusive of costs and disbursements, to be awarded. (Docket #10.)

On April 13, 2010, after requesting and receiving supplemental affidavits from plaintiffs itemizing and supporting the damages and fees they were demanding, Judge Pohorelsky prepared a R&R that the Court award plaintiffs: (1) \$12,136.58 in damages for unpaid ERISA contributions; (2) interest on those contributions of \$2,835.15 through April 12, 2010, plus \$2.00 per day to the date of judgment; (3) \$2,835.15 in liquidated damages; (4) \$3,214.25 in attorneys' fees; and (5) \$409.00 in costs (i.e. the court filing fee and cost of service of process). (Docket No. 17.)

In reviewing a report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Moreover, in order to accept a magistrate judge's report and recommendation where no timely objection has been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). Neither party has filed any objection, much less a timely one.

After careful review of the record, the Court finds Judge Pohorelsky's R&R as to the appropriate disposition of this matter to be correct, comprehensive, well-reasoned, and free of any clear error. The Court, therefore, adopts the R&R in its entirety. The Clerk of the Court is directed to enter judgment consistent with this Memorandum and Order and to close this case. The Clerk is further directed to send a copy of this Memorandum and Order to defendant, via Federal Express, at

the following address:

Columbus Construction Corporation  
687 South Columbus Avenue  
Mount Vernon, New York 10550

SO ORDERED.

DATED: Brooklyn, New York  
May 3, 2010

s/ENV

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ERIC N. VITALIANO  
United States District Judge